

REMARKS

Claim 1 is currently pending. Claims 2-60 are canceled. Reconsideration in view of the amendments above and the remarks below is respectfully requested.

Applicant respectfully submits that the present amendment places pending claim 1 into the properly elected restriction group set forth by a Preliminary Amendment filed on August 28, 2002.

The remarks which follow are directed to the Office Action mailed June 17, 2003 (hereinafter the "Action") and are made in order to assure that a complete response is made to the Office Communication mailed March 05, 2004. The remarks are predicated on the assumption that the references to SEQ ID NO:10 on pages 3 and 4 of the Action are typographical errors and that the correct sequence identifier is SEQ ID NO:12 as set forth in claim 1 above. If this assumption is incorrect, Applicant requests early notification of such.

Rejection under 35 U.S.C. § 112, First Paragraph

The Examiner asserts at page 2, last paragraph of the Action, that, "claim 1 encompasses a method of specifically activating CTLs in a subject or an animal having a tumor expressing Her2/neu, wherein said cytotoxic T lymphocytes are not xenogeneic, and wherein the CTLs could target or kill malignant cells in said animal that express Her-2/neu protein". Applicant respectfully submits that claim 1, as amended above, does not recite the limitations "in a subject or animal having a tumor expressing Her2/neu", "wherein said cytotoxic T lymphocytes are not xenogeneic", or "wherein the CTLs could target or kill malignant cells in said animal that express Her-2/neu protein".

Accordingly, the present rejection is irrelevant and should be withdrawn because the claim does not recite the limitations that the Examiner considers should be enabled.

The Examiner next asserts in the paragraph spanning pages 3 and 4 of the Action, that, "It is unpredictable that one can specifically activate CTLs having an affinity such that said CTLs could target or kill malignant cells that express Her-2/neu in an animal having a tumor burden that express Her-2/neu, due to self-tolerance as taught by Sherman et al. of record". Applicant respectfully submits that because pending claim 1 does not recite the limitation of "targeting or killing of malignant cells that express Her-2/neu in an animal having a tumor burden that express Her-2/neu", the present rejection is irrelevant and should be withdrawn because Applicant does not have the responsibility to enable that which is not claimed.

The Examiner further asserts at page 5, line 2 of the Action that, "it would have been undue experimentation to practice the claimed invention". Applicant respectfully submits that, in view of the specification and the knowledge available in the art at the time the application was filed, one skilled in the art was able to practice the claimed invention, as amended above. There was a high level of skill in the art and no experimentation was required to practice the invention because of the high amount of guidance provided in the specification including a working example. For instance, Example 5 demonstrates that immunizing an animal with the polypeptide of SEQ ID NO:12 specifically activates cytotoxic T lymphocytes (CTLs) in vivo (see e.g., pages 101-111 and Figures 13A and 13B of the specification). Thus, there can be no determination of undue experimentation because no experimentation is required to practice the claimed invention, as amended above.

CONCLUSION

Claim 1 is pending in the present application and is amended herein to conform to the proper restriction group as set forth in the Preliminary Amendment mailed August 28, 2002. Applicant believes that claim 1 is in condition for allowance and earnestly solicits an early notification of allowance from the Examiner.

The Commissioner is hereby authorized to charge Deposit Account No. 19-0962, should any additional fees be required in this application.

Respectfully submitted,

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Date

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